IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
-v-	)	Case No.
	)	20-CR-50-JFH
JIMCY MCGIRT,	)	
	)	
Defendant.	)	
	)	

JURY TRIAL
VOLUME I

BEFORE THE HONORABLE JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE

NOVEMBER 4, 2020

SHELLEY OTTWELL, RPR, CSR
United States Stenographer
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COURT IN SESSION

(On the record at 3:14 p.m.)

THE COURT: You may be seated.

All right. Folks, thanks for coming back. I'm sorry. I think we had some technical difficulties with one of the computers, but I appreciate your patience.

Members of the jury, now that you've been sworn, I will give you some preliminary instructions to guide you in your participation in the trial. At the end of the trial, I will give you more detailed guidance on the law and how you will go about reaching your decision, but now I simply want to generally explain how the trial will proceed.

Beginning with these preliminary instructions and during the trial, you will hear me use a few terms with which you may not be familiar. Let me briefly now explain some of those common terms: You will hear me often refer to "counsel," and that's another way of saying the "lawyers" or "attorneys." I will sometimes refer to myself as the "Court;" the government and the defendant are sometimes called "the parties" to this case.

As members of the jury, it will be your duty to find from the evidence what the facts are. You, and you alone, are the judges of the facts. You will then have to apply those facts to the law as the Court will give it to you. You must follow that law, whether you agree with it or not. Nothing the Court may say or do during the course of this trial is intended to indicate to you what your verdict should be, nor should you take anything that happens or any statement made by the Court as indicating what your verdict should be.

The evidence from which you will find the facts will consist of testimony of the witnesses, documents or other things received into the record as exhibits and any facts the lawyers agree or stipulate to, or that the Court may instruct you to find.

Certain things are not evidence and must not be considered by you as evidence: statements, arguments, or questions by the lawyers themselves are not evidence; objections to questions are not evidence. The parties may sometimes present objections to some of the testimony or to some of the questions or

exhibits. An objection is a proper method of requesting a ruling from the court concerning the evidence.

Lawyers may have an obligation to their respective clients to make an objection when they believe evidence is being offered that may be improper under the rules of evidence. You should not be influenced by an objection or by the Court's ruling on it. When I sustain an objection, I am excluding that evidence from the trial for good reason. You must not consider any evidence to which an objection has been sustained or which I have instructed you to disregard. When you hear that I have overruled an objection, I am permitting that evidence to be admitted and considered by you. Treat the answer like any other.

If you are instructed that some of the evidence is received for a limited purpose only, you must follow that instruction. When I say "admitted into evidence" or "received into evidence," I mean that this particular statement or this particular exhibit is now part of the trial and may be considered by you in making the decisions you must make at the close of the case.

Statements or exhibits, which are not admitted into evidence, may not be considered by you in reaching your verdict. Testimony that the Court has excluded or told you to disregard is not evidence and must not be considered. Anything that you have seen or heard outside of the courtroom is not evidence and must be disregarded. You are to decide this case solely on the evidence presented here in this courtroom.

There are two kinds of evidence: direct evidence and circumstantial evidence. Direct evidence is direct proof of facts, such as testimony of an eye witness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. I will give you further instructions on these as well as other matters at the end of the case, but have in mind that you may consider both kinds of evidence.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will give you some guidance for determining credibility of witnesses at the end of the case.

Transcripts of witness's testimony during this trial will not be available to you during deliberations, and you must rely on your own recollection of a witness's testimony. If any reference by the Court or counsel to a witness's testimony conflicts with your own recollection, it is your own recollection that should control your deliberations and not the statement of the Court or of counsel.

During the course of the trial, I may have to interrupt the proceedings to confer with the attorneys about rules of law that should apply or other matters. Sometimes we will talk briefly here at the bench but sometimes these conferences may take more time, so I may excuse you from the courtroom. I will try to avoid these types of interruptions whenever possible, but please be patient with us if the trial seems to be moving more slowly because conferences oftentimes actually save time in the end.

No statement, ruling, remark, or comment which I may make during the during the course of this trial is indicated to indicate any opinion as to how you should decide this case and none of it is intended to influence you in any way in

your determination of the facts. I may, for example, ask questions of witnesses. If I do so it is for the purpose of explaining matters, which I feel should be brought out, and not in any way to indicate my opinion about the facts or to indicate the weight you should give to the testimony of the witnesses so questioned.

I may also find it necessary, for example, to admonish the lawyers or remind them about certain things. If I do, you should not show any prejudice to either lawyer or their clients because I have found it necessary to make an admonition or a correction.

As you now know this is a criminal case. There are basic rules about a criminal case that you must keep in mind,

First the defendant is presumed innocent. The indictment against the defendant brought by the government is only an accusation and nothing more. It is not proof of guilt or anything else. The defendant, therefore, starts out with a clean slate;

Second, the burden of proof is on the government. The defendant has no burden to prove his innocence or to present any evidence or to

testify. Since the defendant has the right to remain silent, the law prohibits you in arriving at your verdict from considering that the defendant may not have testified;

Third, the government must prove the defendant's guilt beyond a reasonable doubt. I will give you further instructions on this point later, but bear in mind that it is in this respect that a criminal case is different from a civil case.

Now, a few words about your conduct as jurors:

First, I instruct you that during the trial you are not to discuss this case with anyone or permit anyone to discuss it with you or remain within hearing distance of anyone discussing it. If anyone should try to talk with you about this case, please bring it to the Court's attention immediately. Until you retire to the jury room at the end of the case to deliberate on your verdict, you are simply not to talk about this case;

Second, during the trial you should not talk or speak to any of the parties or the lawyers or witnesses involved in this case.

Don't even pass any of the time of day with them. It is important that you not only do this because justice demands it, but we also need to not give the appearance that you may be doing anything improper even if innocent. If a person from one side of the lawsuit sees you talking to a person from the other side, even if it is for a simple gesture just to say hello, any unwarranted or unnecessary suspicion about fairness could be aroused. Again, if a lawyer or party does not speak to you when you pass or pass in the hall or see you outside the courtroom, don't take offense. It's simply because they are not permitted to talk with you;

Third, do not read or listen to anything touching upon this case in any way. Do not read a newspaper article, listen to a radio broadcast, view any television program or anything else in which this case is being discussed. Do not view anything on any social media platform and certainly do not post anything about this case;

Fourth, do not try to do your own independent research of any kind about this case. You, as the jurors, must decide this case solely on the evidence presented here within the four

walls of this courtroom. This means that during the trial you must not conduct any independent research about this case whatsoever, any matters concerning this case, the individuals involved in this case, or anything of the sort.

In other words, you should not consult with any dictionaries, any reference materials, search the internet, websites, look at any blogs or use any other electronic means to obtain any information about this case. Please, do not try to find about -- information about this case from any source outside this courtroom.

Until you retire to deliberate, you may not discuss the case with anyone, even your fellow jurors. After you retire to deliberate, you may begin discussing the case with your fellow jurors but you cannot discuss this case with anyone until you have returned your verdict and the case is concluded.

I know that many of you use cell phones, internet, laptops, and other tools of technology. You must not talk to anyone at anytime about this case using these tools to communicate electronically with anyone about the case, this includes your family and friends.

I expect and trust that you will inform me if you become aware if any of your other jurors may violate these instructions.

Finally, do not form any opinion about this case until all of the evidence is in. Keep an open mind until you start your deliberations until the case is concluded.

You may not take notes during the course of this trial. There are several reasons for this. It is often difficult to take notes and at the same time pay attention to what a witnesses may be saying. Furthermore, in a group of your size certain persons may take better notes than others. There is a risk that jurors who do not take good notes will depend upon the notes of others. The jury system depends upon all 12 jurors paying close attention and arriving at a unanimous decision.

There may have been some publicity about this case prior to trial. But keep in mind that any statements contained in some of any of these accounts, of course, may not be accurate and may have come from individuals who will not be present in court, and who therefore will not be able to be seen and evaluated by you as the jury

like all of the other witnesses, and will not be examined or cross-examined by either of the parties under oath. You must lay aside and completely disregard anything that you may have heard or read about this case outside of this courtroom because your verdict must be based solely and exclusively on the evidence presented here in court in accordance with my instructions to you at the close of the case about the law that you must apply to the evidence. You may not rely upon anything that you hear or see outside of this courtroom in reaching your verdict.

I will briefly outline the course of the trial. First, the government will make an opening statement, which is simply an outline to help you understand the evidence as it comes in. Next, the defendant's attorney may, but does not have to, make an opening statement. Remember, opening statements are not evidence. They are simply a road map to show you what is coming ahead. The government will then present its witnesses, and counsel for the defendant may cross-examine them. Following the government's case the defendant may, if he wishes, present witnesses whom the government may cross-examine,

although the defendant is not required to present any witnesses. I remind you that the defendant is presumed innocent and it is the government that must prove the defendant's guilt beyond a reasonable doubt. If the defendant submits evidence, the government may introduce rebuttal evidence.

After all the evidence is in, I will instruct you on the law and then the attorneys will present their closing arguments to summarize and help interpret the evidence for you. Arguments of counsel are not evidence. After that, you will then retire to deliberate on your verdict.

Our general plan during this trial will begin to each day at 9:00 a.m. We will take a 15-minute break during the middle of the morning, then go to around noon, and then take a break sometime in the afternoon for about 15 minutes. We will generally recess at 5:00. However, it could happen that we might go a little later in the evening as necessary.

Does either side wish to invoke the rule of sequestration?

MS. MCAMIS: The government does, your

Honor, with the exception of the case agent who has been designated.

THE COURT: I understand.

All right. The rule of sequestration has been invoked, and it will require all witnesses, except litigant's representives, to wait outside the courtroom until they are called as witnesses. They should be in or near the courtroom so that they may be called as necessary. They also should be admonished not to discuss their testimony with any other witness.

Is the government ready to proceed with opening statement?

MS. MCAMIS: Yes, your Honor.

THE COURT: Ms. McAmis, you may proceed with your opening statement. You have 20 minutes.

MS. MCAMIS: In the summer of 1996 BrieAnna Coker turned four years old. She should have spent the summer doing what every other four-year-old little girl does, playing with Barbies, learning how to ride a bike with training wheels, but instead that summer when she turned four, Brie learned what it felt like to be violated. That summer when she turned four, Brie

learned what it felt like to have a grown man touch her vagina. Brie learned what it felt like to have a grown man put his fingers inside of her vagina. Brie learned what it felt like to have a grown man put his mouth and his tongue on her vagina, and Brie learned what it felt like for her at four years old to have to touch and rub a grown man's penis.

As we sit here today, Brie is no longer that four-year-old little girl. She's now a 28-year-old woman. But as you will see and hear when Brie testifies, the summer of 1996 has impacted and affected every part of her life.

To understand what happened to Brie and what she experienced, you have to understand a little bit about her family and her family dynamics.

Brie's mother is De Ette Kuswane. De Ette had a sister who she was very close to, Nenna. Nenna is Brie's aunt. Unfortunately, Nenna has since died. De Ette and Nenna's mother is Norma Blackburn. Norma is Brie's grandmother. Norma met the man who she thought was the love of her life around 1992, the defendant, Jimcy McGirt. Norma and the defendant dated, they

quickly were married, and they began living together as husband and wife.

De Ette will tell you that she and her sister Nenna, they had a good relationship with their mother, they had a good relationship with the defendant. It was a bit bumpy at times as it sometimes is when a stepfather comes into the picture, but generally everyone got along. Generally, there were no problems. Brie loved spending time with her grandma, Norma, and Brie accepted the defendant as her grandpa. Brie trusted him in a way that a little girl only trusts a grandpa.

On August 8, 1996, De Ette left to go on a trip to Mexico. The plan was for Brie to stay with her grandma, Norma, and her grandpa, the defendant, for eight days until De Ette returned home from the trip. Norma was working at the time as a nurse in the neonatal intensive care unit at St. Francis Hospital in Tulsa, and she generally worked 12-hour shifts. The defendant was working from home detailing cars, and so he was in charge of babysitting Brie the whole time Norma was at work and the whole time she was driving to and from work. They lived in a Broken

Arrow address in Wagoner County.

So the defendant was in charge of babysitting Brie, and that is when it would happen. That is when the defendant would touch Brie with his hands, that is when the defendant would put his fingers in her vagina, that is when the defendant used his mouth and tongue on her vagina, and that is when the defendant would make Brie touch and rub his penis in a way that no child should ever experience.

The defendant sexually abused Brie in the house, in the bedroom, on the couch, in his truck, anywhere and any time that he could while he was alone with her.

When De Ette returned home from her trip and she went to pick Brie up from Norma and the defendant, Brie was ready to go. She was ready to get out of that house, and De Ette thought it was just because Brie had missed her so much and just because she was ready to go home and have some quality mother-daughter time, but it was so much more than that.

Brie did what children do. She waited about a week until she began to feel safe enough to open up and tell her mother what had happened

to her during those eight days. Needless to say when De Ette listened to Brie describe in the words and in the manner of a four-year-old child what had happened to her, De Ette was heartbroken and absolutely sick. The police became involved, the Department of Human Services became involved. Brie was taken to the doctor for a physical examination.

You will hear from Dr. Douglas Stewart. He is a board certified pediatrician who has been practicing in the field of pediatrics for some 30 years. Dr. Stewart will be here to tell you about Brie's examination that took place in September of 1996. He will tell you that during that examination four-year-old Brie, in the way that a four year old does, described and said, "Grandpa put his fingers inside my private part." She said, "Grandpa asked me to touch his private parts with my hand."

Dr. Stewart will tell you that when a little girl is seen for a sexual abuse examination some people may expect to see a lot of damage. However, he will tell you that the human body is actually really remarkable. Any mom who has given birth can tell you that.

Dr. Stewart will explain that the inside of the vagina is like the inside of your mouth. He will tell you that you can bite or cut or scratch the inside of your mouth today, there might be a sore, but a few days from now it will be completely gone, completely healed and there will be no sign of it.

Dr. Stewart will explain that it is normal to be normal, and he will tell you about the hundreds of pediatric patients he has seen and all of the research in the field which demonstrates that even on examinations of pregnant teenagers, those who have obviously been penetrated because they are pregnant, still have normal examinations.

You will hear that Brie's examination was consistent with the history provided.

De Ette will tell you how her baby girl changed that summer. She will tell you that Brie was a happy, outgoing -- she was a little girl with a wonderful spirit until after that trip.

After the stay with the defendant, Brie was angry. Brie threw temper tantrums. Brie began acting out. Brie became extraordinarily clingy. She was a different child.

In the meantime, Brie was with her cousin Sabrina, Nenna's daughter. Brie told Sabrina, who was also a child at the time, what had happened to her from Grandpa. And Sabrina went and immediately got her mom Nenna. Nenna came into the room, had Sabrina stay in the room with Brie so that Brie would feel more comfortable, and Nenna talked to Brie about what the defendant had done to her and Nenna tape recorded what Brie was disclosing.

Unfortunately, the heartbreak for this family was not over. Once De Ette knew and once Nenna knew, they went to their mother Norma and they told her what her husband, the defendant, had done to Brie.

For whatever reason at the time, Norma chose to stand by her man. Norma had spoke out on his behalf. She stayed married to him and even after he no longer could live with her, she continued to write letters to him and she continued to accept the letters that he wrote to her until sometime around the year 2000.

Norma received a letter from the defendant where he finally admitted what he had done to Brie. The defendant finally apologized

for what he had done to Brie, and the defendant wrote in the letter that the devil had made him do it. We don't still have the letter after some 20-odd years, but you will hear from both Norma and De Ette about that letter and the impact that that letter had on them.

In fact, although Norma should have realized much earlier than she did, the letter was enough for Norma to finally realize that she had been wrong about her husband, and Norma divorced him and she cut him off and now is in a close relationship with her granddaughter again.

That brings us to today. You will hear how the summer of 1996 completely changed Brie's life and completely changed Brie's personality. You will hear about the anxiety and the depression and the lack of trust that she suffers from to this day.

At the end of this trial, on behalf of the United States government, I will come back in front of you and I will ask you to find this defendant guilty for the sexual abuse that he perpetrated on Brie. At the end of this trial, you will have all of the evidence that you need to do just that. Thank you.

THE COURT: Mr. O'Carroll, does the defendant wish to make an opening statement now or reserve until letter?

MR. WHITE, JUNIOR: We're going to do it right now.

THE COURT: Okay. Please proceed, Mr. White.

MR. WHITE, JUNIOR: Thank you, your Honor.

THE COURT: You have 20 minutes.

MR. WHITE, JUNIOR: May it please this Honorable Court, counsel for the government, we're going to present evidence through our examination of their witnesses, the following, and we intend to prove the following:

In about 1991, Mr. McGirt and Norma Blackburn were in a relationship. And you're going to hear that at the time they were in a relationship there were various children of Norma's that were living in that house, and they lived in that house until Ms. Blackburn, Norma, and Mr. McGirt, Jimcy McGirt, got married. Some moved out a little quicker, De Ette; others moved out after. But make no mistake about this, that event of forcing them to move out of their

mother's house put a target on Mr. McGirt's back, and the target on Mr. McGirt remained until De Ette waited about a month and a week to purportedly report this allegation of sexual assault by Mr. McGirt.

So let's talk about it: '91 living with Norma there was Matthew, her son; there was Nenna with her two children--Nenna was a daughter; there was De Ette, and De Ette was living there with her boyfriend; there was a fellow named Bill Gray that was seeing Nenna that was living in that house, and they all move out.

You're going to hear as time goes on we get into 1996, there's about a four- or five-year period, four-year period -- because when De Ette goes to Mexico--I think it was Cancun--De Ette leaves her three-year-old daughter, who is going to turn four on August 13th, with her mother and Mr. McGirt. Her daughter turns four years old on August 13, 1996. BrieAnna.

Now, you're going to hear during this -- and that's a qualified period of time. The government has charged Mr. McGirt that at some point between August 8th and August 15th, these dastardly deeds purportedly occurred, some time

during that seven-day period. But let me assure you of something: We know Norma is going to testify, and we know Norma is a nurse. And she's a nurse that will know, and would know at the time, if anything was wrong with her grandbaby, if anything was wrong with BrieAnna, the three year old about to be four. She's going to testify to you that not a thing -- she didn't see a thing that would raise a suspicion that there was anything going on.

You're going to hear from Matt. We anticipate that you're going to hear testimony from others that were around that seven-day period of time. Nothing. Nothing. Nothing happened.

Norma is going to talk to you about going to work. Norma is going to talk to you about getting home. Norma is going to talk to you about how everything was fine. Nothing.

Now, you heard just now the government saying that De Ette knew within a week of coming home there was something wrong. Now, remember these dates: August 8th to August 15th. The first time De Ette ever chooses to do anything is on September 10th when she writes out a statement

to the Wagoner County Sheriff's Department; on September 10th, a month later. Then on September 11th, you're going to hear that they meet with some folks at the Wagoner County Sheriff's Department, and then you're going to hear on September 12th that she's examined. And there is no sexual assault examination, no SANE nurse, sexual assault nurse exam, because there's nothing wrong with her.

You will see the one document that we will put into evidence of the examination, Dr. Stewart's examination. Normal, normal, normal, normal, normal, normal, normal.

You'll hear the mother is always there when she's trying to -- when BrieAnna is trying to say these words. I want you to listen to the words of a three year old who just turned four, listen to the words that she uses.

Let me assure you the testimony that you're going to hear is that De Ette was hostile. Hostile. That's from Norma, her mother. Her own mother. How was De Ette towards Mr. McGirt when she had to move out? Hostile. De Ette got pregnant with Brie back in '91 and went to the McDonald's House, and from that day forward

De Ette was hostile to Mr. McGirt. Period.

So I tell you a target on his back, the target became that moment when she had to move out of the house, and Norma will tell you that.

Now, we're going to talk about everyone that was around August 8th to August 15th. You're not ever going to hear, you're not ever going to see any evidence associated with BrieAnna having any kind of physical injury. You're going to hear -- I believe maybe the first witness is going to be the doctor, Dr. Stewart. We'll get to cross-examine Dr. Stewart about his examination. You won't ever hear anything about any physical evidence, any blood. She'll say, Well, I think he put his finger inside of me in the bathtub. Nothing. Norma will tell you, I'm the one that gave her the baths, not Mr. McGirt. So we're going to have to break it down in that seven-day period of time about where, if anything, if anything could have possibly happened, when could it have possibly happened and what happened thereafter. Because the evidence is that we're going to prove there was never anything like that that happed to this three-turning-four-year-old girl.

Now, the state says -- the government says we have a -- we have a recording they recorded. Nenna recorded this little conversation that Nenna purportedly had with BrieAnna. There is no recording. There is no recording. Norma says I got this letter where he said the devil made me do it. There is no letter. There is no letter. And there's no physical evidence.

You're going to hear when De Ette comes back from that trip from Mexico, you're going to hear that BrieAnna wasn't afraid of her grandpa, wasn't afraid of Mr. McGirt, wasn't scared of Mr. McGirt. Didn't cry whenever Momma took her. There was none of that.

It was a month later when Momma put the story up. So we're going to hear all this in this courtroom, and at the end of the day we're going to ask you to return a verdict of not guilty on all counts. There's no evidence of any of this happening.

Thank you.

THE COURT: Ms. McAmis, is the government prepared to call its first witness?

MS. MCAMIS: Yes, your Honor.

THE COURT: All right. Please, proceed.

MS. MCAMIS: Your Honor, the government calls Dr. Douglas Stewart.

(Witness duly sworn.)

THE COURT: Thank you. Be seated, please.

All right. Mr. Stewart, if you could, if you're comfortable, lower your black mask a little bit so the jury can see you and be sure to lean into the microphone. Sometimes it's hard for us to hear as that microphone is a little bit tricky with that covering on it.

MS. MCAMIS: May I please proceed, your Honor?

THE COURT: Please proceed.

DOUGLAS W. STEWART, D.O.

after having been first duly sworn, testifies as follows, to wit:

DIRECT EXAMINATION

BY MS. MCAMIS:

Q. Dr. Stewart, I'd would like to tell you I'm kind of turning sideways because of COVID restrictions we have a different layout in the courtroom, okay, and that's also why you need to speak into the microphone; all right?

Could you tell us your name, please.

A. Douglas Wayne Stewart.
Q. How are you employed, sir? Currently.
A. Yeah. Full time?
Q. Yes. Currently.
A. My employer?
Q. Yes.
A. Blue Cross Blue Shield of Oklahoma.
Q. Can you tell us a little bit about your educational background?
A. Yeah. I have a bachelor's degree from OSU. I graduated with a Doctor of Osteopathic Medicine Degree from what was then Oklahoma College of Osteopathic Medicine and Surgery. I went into private practice. I went back to school at night and earned a Master of Public Health degree, and that's my educational background.
Q. When did you graduate with your D.O. degree?
A. 1985.
Q. And when did you earn your Master's of Public Health degree?
A. 1993.
Q. Can you tell us where you completed your internship, and when?
A. Yes. It is what is now Oklahoma State University Medical Center. Internship was '85 to

'86.
Q. Did you complete a residency in the field of pediatrics?
A. I did.
Q. When was that and where?
A. I completed that in 1988 at the same institution.
Q. Are you board certified in the field of pediatrics?
A. Yes.
Q. Could you explain to us what board certification is?
A. Yeah. When I took it, the certification was a series of some written exams and some oral exams after you been out in practice for a number of years to establish that you met a threshold of competency.
Q. When did you obtain that board certification?
A. 1991, as soon as I had three years of practice.
Q. Have you served any academic appointments in your career?
A. Yes. I worked full-time as an academic pediatrician from 1992 until 2016.
Q. Can you tell us what working full-time as an

academic pediatrician, what does that mean? What does that entail?
A. Well, since it's a teaching institution there's a teacher role, so I taught medical students and residents, nurse practitioners, or PA students. I also engaged in practice at a certain amount of time, so I saw patients independently, and then there's a certain amount of scholarly work that's expected in most settings like that. So either doing some research, policy analysis, publication.
Q. You explained that you were in part in charge of teaching other practitioners in the area of pediatrics.
Did you serve as the program director for the pediatric residency program at OU Health Sciences Center of Tulsa?
A. I served a number of years as the assistant program director of pediatrics. Also the co-program director for combined internal medicine and pediatric.
Q. What did those job responsibilities entail?
A. It involved recruiting prospective residents, evaluating residents, assuring that the program met accreditation criteria, and that the

residents were eligible to take certification exams by the time they completed their training.
Q. Are you a fellow in the American College of Osteopathic Pediatricians?
A. I am.
Q. Is it -- have you ever received any honors or awards for your teaching medical personnel in the field of pediatrics?
A. Yes. I've received a couple of awards.
Q. Specifically, I want to ask if you've received the Academy of Teaching Scholars in Excellence Award, the -- I don't even know how to say this -- A-E-S-C-U-L-A-P-I-A-N Award?
A. Aesculapian.
Q. There you go. The Daniel Plunkett Teaching Award. Are those some of the times that you have been honored?
A. Yes, ma'am.
Q. Have you -- has your work in the field of pediatrics been published?
A. Yes.
Q. Can you explain to us what that means, to be published, as a pediatrician?
A. Well, it's in a peer-reviewed journal, then it's been held up to the scrutiny by other

clinicians before it's published in textbooks. There's an editorial function that reviews your work, but generally people that are successful in that have been able to meet a certain standard of quality of their academic output to be able to be published.

Q. You told us that you are currently employed by Blue Cross Blue Shield of Oklahoma; is that correct?

A. Yes.

Q. In capacity do you serve that organization and for how long?

A. I've been there for a little over four years, and I serve as a medical director in charge of measuring the performance of clinicians and systems, so I use my epidemiology training from my MPH degree now to do that.

Q. Can you tell us about your assistance to the medical examiner's office for Rogers, Creek, Osage, and Wagoner Counties?

A. Yeah. I worked part-time for the medical examiner's office when I was a student. And then once I earned my license, the State of Oklahoma still had a system where they relied on local physicians to investigate deaths outside of the

urban areas, so I did that for a number of years until they developed a system with non-physician, full-time death investigators.

Q. What is the board of medical-legal investigations, and how have you served that board?

A. That's the state. It's the governing board for the state agency, the office of the Chief Medical Examiner. I've been a designee of a couple of different statutory positions over a number of years, including serving a stint as chairman of that board and vice chairman.

Q. So I've asked a little bit about your current work with Blue Cross Blue Shield and your work with the medical examiner and those types of investigations, but now I want to return to your years in the field exclusively in pediatrics.

I believe you said that was from 1996 to 2016, essentially full-time?

A. Yes. So I was a pediatric resident beginning in '86, then I left full-time pediatric practice in 2016.

Q. So approximately 30 years?

A. Yes.

Q. Do you have any estimate in that 30-year time

period as to the number of children you have treated as a pediatrician?
A. Well, it would be in the thousands or tens of thousands, I would imagine.
Q. In your role as a pediatrician what are you looking for when you evaluate a pediatric patient?
A. Oh, when you're looking at, you know, again your general observations of the child's response to their environment, their ability to communicate, looking at the way they move. So, you know, all of these are potential clues to finding something that might be wrong that you could intervene.
Q. When we talk about "the history," what does that mean?
A. There's a saying that if you listen to the patient long enough they'll tell you what's wrong with them. So unfortunately sometimes it's hurried a lot, but that's the talking that goes on in terms of the information that's pertinent to the reason that they're there or the chief complaint. But it also involves a history of just their experience with disease, their medical history, surgical procedures they've had, social

history, so where do they live, who cares for them, where they go to school, that kind of stuff.

Q. Why is that history so important to you as a pediatrician?

A. Well, again, I think that it's quite true that if you do -- if you are diligent and you ask all the right questions and you listen carefully and you don't interrupt, many times you have a pretty good idea of what's going on before you even examine the patient.

Q. So when we're talking about things like history, if I, as an adult, go to the doctor and say my "throat hurts" is that part of the history?

A. Yes.

Q. So as a pediatrician do you see babies, infants, toddlers that are too young to be able to communicate that to you?

A. I do, and that's part of the challenge of it.

Q. Who do you then obtain that history from if they're too young to communicate it?

A. Generally, it would be a knowledgeable caretaker like a parent, relative, guardian that's with them that knows the child.

Q. If the child is old enough to communicate his or her history, do you obtain that from the child?

A. Yes. You want to recognize the agency of the child to the best of their ability.

Q. Have you had the opportunity in treating thousands of pediatric patients to speak to hundreds of different children about why they're there to see you?

A. Yes.

Q. When there is a history of sexual abuse of a child and you are seeing that child as a patient, how do you go about conducting the physical examination of that type of history?

A. Again, that's a particularly vulnerable patient so you typically, in terms of the exam, you would go ahead and make the exam rather comprehensive and start with rather non-invasive things like listening to the heart, listening to the lungs.

So generally a good rule for the younger-aged children no matter what the cause is, and then you gradually work up to a more invasive portion of the exam, like using an otoscope to look in the ears, look in the back of the mouth and then

you work your way down feeling of the abdomen. If there's a need to examine the genitalia or the anus, you would generally save that more the towards the end.

Q. It sounds like you're describing a head-to-toe examination. If they're complaining of sexual abuse, why not just examine the genitalia?

A. Well, you know, first off to listen and then just go right to that area, would potentially be traumatic to the child. So you're winning some trust, plus, you know again with the nature of the complaint as opposed to just a sore throat, you want to do just a general survey of the child to make certain that you're not missing anything.

Q. When you do do a genital examination of the child, is it like an adult woman when she goes to the gynecologist? Is it like that?

A. No. It's generally just a visual exam in a general pediatric office. There's no gynecological table with stirrups. The child -- again, when they're comfortable to be asked to maybe just on their back lay on the table or even on the parent's lap, maybe assume kind of like a frog-leg position so the heels are together and

flexing the knees completely.

At most, the clinician might, you know, use their thumbs to pull some of the tissue just gently apart just to be able to see all of the anatomical structures. But that would be quite different than what an adult woman would experience.

Q. When you're talking about a child's anatomical structures and her genitalia, what is it you're looking for or looking at? Can you describe that for us?

A. Yeah. You're looking for the age-expected anatomical parts that again obviously persist with an older woman, but you're looking also then to see that the age -- the appearance matches their age in terms of their hormonal influence that occurs before puberty, and then during puberty.

We're also generally looking for fairly rare aberrations of development when some of the hormonal influences go wrong or embryonic -- during fetal development things don't grow right.

Obviously, you know, when you look at a baby, you can detect some of that. Some of it's difficult to appreciate until they start

progressing through their toddler years.
Q. Dr. Stewart, in your experience as a pediatrician have some parents expressed a belief to you or some cultures expressed a belief that you can tell by looking at a girl whether she's a virgin or not, whether she has a hymen or not, that type of thing?
A. Yeah. I've encountered that thought before.
Q. Is that correct?
A. No.
Q. Can you explain that to us.
A. There's so much variation in the development of the external genitalia that it has been -- we've disproven that. The best science indicates that there's -- it's very rare that the hymenal structure would be intact and would be traumatized the first time there's been penetration.
Q. I want to ask when you're looking at that part of the body is there another part of the body that the tissue in the vaginal area is similar to?
A. Yeah. The tissue of the vagina is a mucus membrane. So certainly inside of the mouth has a very similar type of lining in terms of mucus

membranes.
Q. So how is that important to you as a pediatrician in terms of comparing what we might see as some type of injury to the mouth and comparing what we might see as some type of injury to the vaginal area?
A. The mucus membranes do tend to heal quicker than keratinized epithelium or skin that you've got, you know, on your arm or hands. And seems to -- unless you've got some special equipment or something -- not show obvious scars.
Q. So when you're doing that type of examination on a child, how might your findings be affected by how long it has been since the last incident of reported abuse? In other words, if the abuse was yesterday versus a month ago.
A. Well, in this instance, you know, time does tend to heal wounds. So whether it's, you know, a laceration or abrasion or bruise, the passage of time tends to take away your opportunity to identify evidence.
Q. Have studies been done and performed on how long it takes vaginal tissue to heal?
A. Yeah. I think there have been some case reports published where clinicians had

opportunity to know exactly when an injury occurred and had documented it over time that it can be just a matter of days.

Q. And have those studies documented that after a matter days it's completely healed and there's no sign of that injury?

A. Yes, I agree.

MR. WHITE, JUNIOR: Your Honor, I object. First, on hearsay, no foundation. I don't know what study has been identified that he bases his opinion upon.

THE COURT: Overruled.

Q. (BY MS. MCAMIS:) First of all, I want to ask you about some specific studies. Is one of the studies that you're referencing by a Dr. Robert --

MR. WHITE, JUNIOR: Leading.

THE COURT: Overruled, Counsel.

Q. (BY MS. MCAMIS:) -- Dr. Robert Block, who was the chief pediatrician for the American Academy of Pediatrics?

A. Yes.

Q. I want to also ask you about studies that have been conducted by Dr. Nancy Kellogg.

Are you familiar with those studies?

A. I'm familiar with her work in terms of documenting abnormalities versus normality of genitalia in a population of young girls who were pregnant.
Q. With respect to those girls being pregnant, why is that important in terms of the studies that have been conducted?
A. Well, you know, it was an attempt to establish the reliability of an external exam and checking whether a young girl had penetration of her introitus.
Q. And so if a girl has been -- is pregnant does that indicate that there has been penetration?
A. Yes.
Q. And with respect to Dr. Kellogg, of those over 2,000 sexual abuse examinations can you tell us whether 96 percent of those were normal with no findings?
A. I think that's correct.
Q. Is there an expression point for that, if you will, "it's normal to be normal"?
A. Yes.
Q. Why is that significant to you as a pediatrician?
A. That you can't claim to be able to rule out

an injury just because the finding is normal.
Q. Is it important for some of the girls that you examine to reassure them that, in fact, they are normal and it's normal to be normal?
A. Sure. Sure. That's one of the two of a handful of reasons to go to see a clinician is to receive some comfort or some answers, so the reassurance is a part of that.
Q. I want to ask you specifically about your care and treatment of BrieAnna Blackburn, now Coker. Did you see her as a patient at the OU Health Science Center Pediatric Clinic on September 12, 1996?
A. I don't recall, but I've seen a document that indicates that I did.
Q. That's what I want ask about. That was 24 years ago.
Do you have an independent recollection of this particular examination?
A. No.
Q. At the time on September 12, 1996, was this examination of BrieAnna documented in the medical chart?
A. Yes.
Q. And have you had the opportunity to review

the medical chart from that day?
A. I have, yes.
Q. So when you're testifying are you saying that's what you're testifying from and about, your review of the medical documentation from that day?
A. Yes.
Q. Can you tell us, and if you need to see it to refresh your memory, just let me know, but can you tell us what was the history, the chief complaint, how and why were you seeing BrieAnna as a patient that day?
A. I think it might be best if I had it right in front of me so I can look at because otherwise I'm just based on my recall.
MS. MCAMIS: I can get it. Your Honor, may I?
THE COURT: You may.
MS. MCAMIS: Thank you.
MR. WHITE, JUNIOR: Judge, I have a copy of it I would be happy to give.
THE COURT: It looks like Ms. McAmis has found it.
Thank you, counsel.
MS. MCAMIS: May I approach, your Honor?

THE COURT: You may.

MS. MCAMIS: Again, and for the record, it's Bates 413.

Q. (BY MS. MCAMIS:) Is that, in fact, a copy of the medical record from that day?

A. Yes.

Q. So can you tell us now on the medical record is there a category for "chief complaint?"

A. Yes. "CC:" is chief complaint. It says, "Rule out sexual abuse."

Q. Were you able to determine how old BrieAnna was at the time?

A. Yes.

Q. How old?

A. Four years.

Q. Does the history that was obtained contain information from both a parent and from Brie herself?

A. Yes.

Q. How is it differentiated within the record?

A. So it's written with quotes around the statement that "Grandpa put his finger inside my private parts," end quote and that's a convention that we use for a direct quote.

Q. In other words, that's directly what Brie

stated?
A. Yes.
Q. Okay. Was that history that was obtained from Brie for the purposes of medical diagnosis and treatment?
A. Yes.
Q. What was the history that was obtained about where Brie had been and when?
A. It says that she had stayed with her grandparents from August 8th through the 15th of this year.
Q. You told us that Brie made the statement, "Grandpa put his finger inside my private part" is there another statement with quotes that is directly attributable to Brie?
A. Yes. It says quote, "Grandpa asked me to touch his private parts with my hand" end quote during the visit, or during the clinical visit that was said.
Q. Was history also obtained from BrieAnna's mother about whether or not law enforcement or the Department of Human Services were involved?
A. Yes. It is documented that the mother has already reported the incident through DHS and law enforcement.

Q. And is it documented whether any counseling had been sought?
A. And it furthermore says that she has sought counseling through Victory Christian Center.
Q. Did the history also include who Brie was living with at the time of the examination?
A. Yes. Under the social history it says that she lives with her mother.
Q. Does it indicate what type of relationship she has with her mother?
A. It says in quotes "close relationship," end quote with Mom.
Q. Was a physical examination done of Brie?
A. Yes.
Q. Can you tell us on the medical record are there different portions of the physical exam that were documented?
A. Yes.
Q. As we go through these different areas can you explain to us what they mean? The first category is listed as "GEN"; is that correct?
A. Yes.
Q. Can you explain what that means?
A. Yes, that's just a general observation that begins as soon as you see the child in the room.

Typically, it's an opportunity to make some kind of a statement about how appropriate the encounter was and how the child was doing.

Q. What findings were listed under that category?

A. It says that she was alert and she was cooperative.

Q. Is there also a space where it can be checked whether it's normal?

A. Yes.

Q. Okay. So it was normal; is that correct?

A. Yes. But furthermore under the comments that are specified, you know, alert and cooperative.

Q. All right. I want to ask about the next category, which is designated as HEENT. Is that head, eyes, ears, nose, and throat?

A. Yes.

Q. Can you tell us how that was categorized?

A. Yeah. It was a check mark for normal and then a column.

Q. What areas of the ears were checked?

A. She's done -- an otoscopic exam had been performed in the TMs, or the tympanic membranes or eardrums were clear, which is a normal

condition for them, and that the pharynx was clear.

Q. Does that mean her throat was clear?

A. Yes.

Q. The next category is neck; is that correct?

A. Yes.

Q. How was she categorized there?

A. Just a normal check with no comments.

Q. What about the next category, which is designated as RESP.

A. Respiratory exam. Normal.

Q. What did it say about her lungs?

A. That her lungs were clear to auscultation.

Q. Is that what the "CTA" stands for?

A. Yes.

Q. Then is the next category CVS, cardiovascular system?

A. Yes.

Q. What is noted there?

A. Check mark for normal.

Q. What is noted about her heart?

A. That she had a regular rate and rhythm.

Q. So is the next category for an abdominal exam?

A. Yes.

Q. What is noted there?
A. Normal check.
Q. What is noted about her bowel sounds?
A. That they were detected or present positive.
Q. And is that an indication of normal?
A. Yes.
Q. Thank you. And tell us about the next category.
A. GU, genital urinary.
Q. What does that stand for?
A. Genital urinary.
Q. Okay. The genitals and the urinary system?
A. Yes.
Q. Is that categorized as normal?
A. Yes.
Q. Can you tell us what Tanner stage she was indicated for?
A. Tanner stage one.
Q. What is the Tanner stage and what does Tanner stage one indicate?
A. That would be the very first stage that's completely not influenced with any hormonal development in terms of indicating a progression into puberty, that would be appropriate for a four year old.

Q. In other words, she had not shown any signs of puberty?
A. Yes.
Q. Can you tell us the additional indications that you listed in that category?
A. Additional information that's documented in that category?
Q. Correct.
A. So there's a 0 or a null sign for tears or lacerations.
Q. How does it describe her hymenal opening?
A. That it was oval with smooth, slightly rolled borders, and no apparent scaring.
Q. Was any discharge indicated?
A. No.
Q. Is the next portion of the examination rectal?
A. Yes.
Q. How is that described?
A. Normal.
Q. What is the next portion of the examination for EXT?
A. Extremities, normal.
Q. Okay. And the next portion of the examination for neuro.

A. Yeah, neurological system, normal.
Q. As part of Brie's examination was there any forensic examination conducted or cultures taken as would occur with an acute visit to a SANE nurse, a sexual assault nurse examiner?
A. No. There was no cultures taken and the examination was just restricted to the external exam of the genitalia.
Q. Why not? Why not swab for semen, look for hairs, the types of things that a SANE nurse would do in an acute examination?
A. Well, passage of time and then also there is a team that specializes in doing that in a way that minimizes the trauma to the child.
Q. In that part of the document when does it state that the sexual abuse allegedly occurred?
A. Around a month prior to the encounter in the clinic.
Q. So if a month had passed since the last time of sexual assault would it be appropriate to perform an acute SANE nurse examination?
A. Well, again, SANE nurses generally are not involved in these exams with a four year old anyway. And I would say probably not.
Though with the information that's here, I

couldn't say that that wasn't in her future anyway since it had been reported to DHS and to law enforcement.

Q. Was a plan documented for Brie?

A. Yes.

Q. What was that?

A. It says that mother was to continue with Department of Human Services and the sheriff's investigation and to return to the clinic, RTC, as needed, PRN.

Q. What does that mean?

A. That if she needed to come back, she was welcome to come back for additional exam or conversation.

Q. Dr. Stewart, based upon your training and experience in the field do you have a medical opinion as to whether or not Brie's examination was consistent with the history that was provided that day?

A. Yes.

MS. MCAMIS: Thank you. I have no further questions.

THE COURT: Cross-examination.

MR. WHITE, JUNIOR: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. WHITE, JUNIOR:

Q. Good afternoon, Doctor.

A. Good afternoon.

Q. I want to talk initially about your education background, and then move into some areas of the human anatomy and ultimately get to what we're here on.

My first question is what's the difference between a D.O. and M.D.?

A. They're just two different degrees for physicians in this country; licensed in all 50 states.

Q. Is there a difference in -- I'm sorry.

A. Practice medicine, do surgery, both of them.

Q. So why would one choose to go the D.O. route versus the M.D. route or vice-versa? What's the theory behind that?

A. There's a lot of reasons. The osteopathic schools traditionally had produced a higher proportion of primary care physicians, family doctors, GPs, pediatricians, internists.

You know, it could boil down to in a state like Oklahoma if you would rather live in Tulsa than go to Oklahoma City.

Q. Tulsa puts out D.O.s; Oklahoma City puts out M.D.s?
A. Yes.
Q. All right. And you mentioned D.O.s in the D.O. field, D.O.s, maybe there are more primary care physicians in the D.O. arena than in the M.D. arena. Did I hear that right?
A. Yes. I think that still may be even true today.
Q. Very good. Because I see here on the document, I don't want to get ahead of myself, but speaking of D.O.s the primary care physician for BrieAnna was Gibson, a Dr. Gibson.
Do you see that?
A. Yes.
Q. Do you know who Dr. Gibson was?
A. Yes.
Q. Who is Gibson?
A. Gwendolyn Gibson was another pediatrician that was practicing with me in the academic pediatric group at OU Tulsa.
Q. So you two were together back in '96 when you did this exam?
A. Yeah. We were partners in the same practice back in '96, yes.

Q. We'll get to that. You're not a gynecologist?
A. That's correct.
Q. Now, your resume, you graduated from the Oklahoma State University; true?
A. Yes.
Q. And then you went to Oklahoma State University College of Osteopathic Medicine and became a treating D.O.?
A. Yes.
Q. Medical doctor. Not medical doctor. Doctor of Osteopathic Medicine?
A. Yes.
Q. And also you got a Master's in Public Health from the University of Oklahoma Health Science Center.
A. Yes.
Q. Tell us about that. What does a Master's in Public Health tell us?
A. Well, so public health encompasses epidemiology, health promotion, disease prevention, health policy analysis, environmental and occupational medicine, environmental toxicology. So people that want to specialize in those areas would be expected to go back to

school and earn one of those degrees.
Q. Like this pandemic that has us all dealing with that issue and not wanting to get that, is that part of your public health training, studying how to deal with pandemics, prevent pandemics, things like that?
A. Yes, sir.
Q. And is that one of your areas of interest?
A. It is.
Q. Very good. And your post-doctoral training, I understand you did a traditional internship at the OSU Medical Center here in Tulsa, there in Tulsa?
A. Yes, sir.
Q. Up the street there, turnpike.
And you also did a resident in pediatrics at the OSU Medical Center?
A. Yes, sir.
Q. What is the difference for us non-medical doctors, what's the distinction between an internship and a residency?
A. Well, it's rare to run into a rotating internship anymore, but that's that first year after you graduate from medical school where you tend to be based in a hospital almost

exclusively, and you're doing all of the, you know, basic work in a hospital in order to master the art of extracting an interview and doing exams and making orders and working with teams in a hospital. So I rotated through all of the services for an entire year before I focused just on children.

Q. Because after you got your -- you completed your residency in pediatrics, you continued in your training and licensure and certification, you became a diplomat for the National Board of Examiners for Osteopathic Physicians and Surgeons.

Do you remember that?

A. Well, that's just the licensing exam that I passed.

Q. And what does that qualify you to do?

A. If you pass the three parts of that particular exam, then you can submit that to a state listening board for your credentials to get a license.

Q. And start practicing medicine?

A. Yes.

Q. And you also became board certified through the American Osteopathic Board of Pediatrics;

true?
A. Correct.
Q. In order to take that certification, you've got to take a test; don't you?
A. A couple of them.
Q. And you've got to retest to continue your certification?
A. That changed shortly thereafter so my certification is a lifetime one, but a couple of years after that they instituted a requirement to retest every 10 years.
Q. But because of your admittance in 1991, five years before you saw BrieAnna, five years before that you had become board certified?
A. Yes, sir.
Q. Now, notwithstanding that you also have served -- you've served as a teacher, as a professor; true?
A. Yes, sir.
Q. Both as an adjunct professor, an assistant professor of pediatrics at the Tulsa campus, an adjunct assistant professor of public health on your master's degree, an associate professor of pediatrics at the Tulsa campus, and you did that from a '03 to '16; true?

A. Yes.
Q. And that's where you're teaching other people who want to become a pediatrician?
A. Well, the medical students have become neurosurgeons and internists, so I have taught medical students.
Q. Gynecologists?
A. Yes.
Q. Can a D.O. be a gynecologist?
A. Yes.
Q. Do you know D.O. gynecologists?
A. I do.
Q. Now, I know that currently you work for Blue Cross and Blue Shield, but before we get to that and I think that's where you say that you're the Medical Director, Quality Metrics and Performance for Blue Cross Blue Shield of Oklahoma?
A. Yes, sir.
Q. And you've been doing that as your full-time job since 2016?
A. Yes.
Q. Now, I have here some publications that I was very interested in because of you coming here to share your thoughts with us on this case.
Have you ever published an article, a

publication, a journal, a book, a magazine, on sexual abuse of children?
A. No.
Q. Same question for sexual examinations of children who allegedly have been abused.
Have you written on any of that?
A. No.
Q. Like a protocol to go through to determine whether that child, whether it's a -- regardless of age up to 18, a protocol as to how to properly examine a sexual abuse victim, have you ever written on that?
A. No.
Q. But I understand that your testimony is such that before you saw BrieAnna in '96, 1996 on September 12th, that was not your first examination of a child who allegedly had been sexually abused; true?
A. That's true.
Q. On these other examinations before BrieAnna in 1996, did you ever have occasion to send a child who was the alleged victim of sexual abuse for further examination in some way, shape, or form following your examination?
A. Yes.

Q. Tell us about that.
A. Well, the group that I belonged to included some pediatricians who specialized in child abuse and neglect, and so informally it would be a fairly simple matter if there was another one of those physicians right there in the clinic that you could involve them. It was a privilege that we had that generally was not afforded to the larger community because they wanted the referrals into that special clinic to come through DHS and law enforcement, but we did have the ability to do that with our own clinic.
Q. All right. And what type of further examinations are we talking about?
A. Well, probably the -- an important one would be the services of a trained forensic interviewer. The environment that they use is less of a clinic and more like a home, the ability to record interviews, special equipment for photography and a colposcope, which is an instrument that magnifies structures on external exam.
Q. I got three so far. Maybe send them for a forensic interview. Yes?
A. Yes.

Q. Tell us what that is again, please. What is a forensic interview of a minor child who's the alleged victim of a sexual assault?
A. So you know it's somebody who takes great care to do a developmentally appropriate interview based on the age of the child, and to spend the time to hear their whole story and to take care to not ask leading questions.
Q. To spend time not to ask leading questions. Did I understand that right?
A. Yes.
Q. Is that important to not ask leading questions of a minor child who allegedly is coming to an interviewer, a professional forensic interviewer, is it important not to ask those leading questions?
A. Yes.
Q. Why?
A. Well, so that you might be able to determine the truth. Children can be really impressionable.
Q. What do you mean by that?
A. Well, I mean, they may want to, you know, please an adult that's in the room or to please the interviewer, if you're not careful.

Q. Please the adult in the room.

Although, I'm probably going to be getting to this whenever I want to talk about BrieAnna, but what was Momma in the room the entire time that you were with BrieAnna?

A. Oh, I don't recall.

Q. Would your examination note refresh your memory as to whether she was in there the entire time that you spent visiting with BrieAnna?

A. No, it doesn't state that.

Q. Do you know why it doesn't state that?

A. You know, this is a fairly complete note that would go beyond what I would expect in the clinic.

Q. If the patient was alone, if you were alone with BrieAnna when you were taking a history, so it's just you and this four year old that turned four within the month, she turned four -- do you know when she turned four?

A. No.

Q. August 13th of 1996. You see her September 12th of '96.

Would you document in any way when you're taking the history of a four year old who's in the room?

A. Yes.
Q. All right. Now, I want to get back to your -- your training. You have -- you have done -- this is not the first time that you've testified; is it?
A. This is not the first time I've testified.
Q. You testified in various courtrooms through the years concerning criminal cases; true?
A. Yes, sir.
Q. Now, are you still a treating doctor?
A. No.
Q. In 2016 when you took the job with Blue Cross Blue Shield, that job took you out of being a classic Marcus Welby doctor like I watched on TV?
A. Yes.
Q. All right. All right. Now, as your employment with this Blue Cross Blue Shield are you involved with health claims that come in from people seeking reimbursement for medical expenses?
A. Yes, to a degree.
Q. Explain to us how you assist Blue Cross Blue Shield, the insurer for a bunch of people, myself included, with the claims process?
A. I have a small role in helping decide where

appeals go in terms of sending them outside for an external specialty management, and I review those reports when they come back and will follow the recommendations about whether to uphold a prior decision or to overturn it and approve a claim.

I have a small role also in working with the team that investigates fraud, waste and abuse that involve claims.

Q. In what way? Fraud, waste, and abuse of claims from the practitioner, the medical provider --

A. Yes.

Q. Overcharging or doing treatment that's unnecessary?

A. Yes.

Q. All right. Okay.

Now, let's see. This document that we have here--I've got four copies of it--is that the only medical record you have of anything you did as it relates to BrieAnna?

A. Yes, this is the only page that I have.

(Item marked Defendant's Exhibit No. 14.)

MR. WHITE, JUNIOR: I want to move the admission of Defendant's Exhibit 14, page one Bate

Stamp 413, the medical record in front of Dr. Stewart.

THE COURT: Any objection?

MS. MCAMIS: No objection, your Honor.

THE COURT: It will be admitted.

Q. (BY MR. WHITE, JUNIOR:) Now, in terms of -- let's just get to it.

Can I use this, Mr. Davis?

Can you see that?

A. Yes, sir.

Q. Does that appear to be the same document that you've got in front of you?

A. Yes, sir.

Q. Let me just watch -- I'll -- what you have in front of you, we have it up here on the screen.

A. Yes, sir.

Q. All right. Now, first, this is a medical record from the OU Health Science Center-T. I guess that's for "Tulsa"?

A. Yes, sir.

Q. Pediatric Clinic; right?

A. Yes, sir.

Q. And so is this your clinic that you work in?

A. Yes, I was working there at the time.

Q. And then we see over here Medicaid PCP,

primary care physician?
A. Yes.
Q. Gibson?
A. Yes, sir.
Q. Do you know if Dr. Gibson -- but before I ask that, before I ask that, do you remember how BrieAnna came to you?
A. No.
Q. If we didn't have this record in front of us today, would you be at a loss as to what you did on September 12, 1996, concerning this examination?
A. Yes.
Q. All right. And so whatever is on this paper is going to be what you did?
A. Yes.
Q. Best you can tell?
A. Yes.
Q. All right. And so there's nothing today that you would like to try and amend, change, qualify, modify on this document because you don't remember it?
A. No.
Q. Do you agree?
A. Yes.

Q. Do you know if Gibson -- is Gibson a man or a woman?
A. It's a female.
Q. Female. And what's her first name?
A. Gwendolyn.
Q. You said that. I apologize.
Dr. Gibson, do you know if Dr. Gibson participated in this examination with you?
A. There's nothing in the document to suggest that she did.
Q. Do you know if Dr. Gibson visited with you before or after your examination of her primary care patient?
A. I do not recall.
Q. Very good. We see on September 12th of '96, you saw her in the morning time?
A. Yes.
Q. Her age is four years old and her weight is 25.8 pounds; is that right?
A. I think we generally recorded the weight in kilos.
Q. Kilos. How much would kilos be in pounds?
A. It would be between 50 and 60 pounds.
Q. And she -- and we'll get to this, but everything was good with her in terms of her

weight, and in terms of her appearance, in terms of her affect; right?
A. Yes.
Q. What is "affect"?
A. Your -- I mean, some people would call it the "mood." But externally it would be your response to your environment and to other people.
Q. Okay. Now, if Momma came in do you know the name of BrieAnna's mom?
A. No, I do not.
Q. De Ette. If De Ette came in to this courtroom today, do you think you could recognize her and say that BrieAnna's mom?
A. No.
Q. Okay. Now, CC: RO sexual abuse. What does that -- rule out sexual abuse; is that right?
A. Yes.
Q. Or report of sexual abuse. Which is it?
A. Rule out.
Q. And what does "CC" stand for?
A. Chief complaint.
Q. Chief complaint: Rule out sexual abuse.
So "rule out," does that mean rule out that sexual abuse didn't happen, does that mean rule out sexual abuse did happen? What?

A. That is generally reported by the nurse or nurse assistant that put the child and the parent in a room, and so that would be their understanding of what the reason for the visit was.
Q. Child and parent are in a room together; a nurse goes in and do you know who was doing the talking when "sexual abuse" came up? Momma or the four year old?
A. Are you talking about when they first roomed them or when the first clinician went in there?
Q. I'm talking about when they came in to the OU Health Science Center Pediatric Care Clinic and they checked in.

Do you know what their check-in was: Did they check-in because my baby girl doesn't feel good, or are we checking in because I think she's been abused, I'm telling you that she's been abused?

Do you know what was said there by Momma?
A. I don't have any record of documenting what was said when she checked in.
Q. So who made the determination CC: Rule out sexual abuse? The nurse or you?
A. The nurse would tend to write that once they

retrieve the patient and parent from the waiting room, brought them back to the room and started the record.
Q. How long were Momma and baby girl in that waiting room with the nurse?
A. Doesn't stay.
Q. How long were they alone in the room together waiting on someone to get in the room with them?
A. There's nothing documented about that.
Q. Give us your best estimate. Five minutes? 10 minutes? 30 minutes? How long?
A. Well, I mean, I could go back and maybe average my experience over 23 years or so, and say maybe 10 minutes.
Q. Ten minutes. But nothing's recorded in that room like it would be in a forensic interview where Mom's not in the room. It's just the child and the interviewer; right?
A. Yes, certainly no recording.
Q. No recording. Do you think the nurse got the sexual abuse from the child or the mother; do you know?
A. Don't know.
Q. Interesting question; agree?
A. Yes.

Q. Do you know what De Ette's relationship was with Mr. McGirt as you sit here today?
A. No.
Q. Do you know what De Ette testified to under oath about what her relationship was?
A. No.
Q. Or what Norma, Norma Blackburn? Do you know who Norma Blackburn is?
A. I think I met her.
Q. Grandma, grandma to BrieAnna?
A. An older lady named Norma I met today.
Q. Do you know what Ms. Blackburn has testified to regarding De Ette?
A. No.
Q. HPI. What does "HPI" stand for?
A. History of the present illness.
Q. Now, you have here -- but before we get to that, they go from -- Momma and BrieAnna, do they go to a different room after having met with the nurse? Are they changed into a different room or do you go into the room they're in?
A. Typically they would be left in the room after a short wait and the clinician would go in there next.
Q. Okay. Now, do you know if the nurse was in

the room when you went in there?
A. No.
Q. Do you know if the nurse left you any notes about -- you're about to walk into a room where Mom's saying her daughter is sexually abused.
Do you have anything like that in your file that gave you a head's up as to what you were about to be confronted with?
A. No.
Q. And when you go into a room with a patient, do you have your stethoscope?
A. Typically, yes.
Q. You don't have a colposcope?
A. No.
Q. And a colposcope would allow you -- have you ever used a colposcope?
A. No.
Q. That's for gynecologists; correct?
A. Typically, yes.
Q. But a colposcope could literary, could literally see a pinpoint abrasion on a posterior fourchette, the vulva, what have you. A colposcope could help you in determining that through a sexual assault examination; true?
A. It certainly provides magnification beyond

what you can see with the naked eye.
Q. Do you know how much of a magnification a colposcope could help us with on a sexual, a purported sexual assault examination of BrieAnna at four years old?
A. No.
Q. But you didn't see any need for that when you saw BrieAnna on September 12th; true?
A. Yes.
Q. You agree with me?
A. I agree with you.
Q. Now, I want to backup just a minute before we get into this history. You don't know any of the family dynamics going on in September of '96 with the Blackburn family, Mr. McGirt, Mrs. McGirt.
You don't know any of that; true?
A. That's true.
Q. All right. Now, what you're told is patient is a four year old, and then there's this little stick person I see. Do you see that?
A. Yes.
Q. What does that "patient is a four year old with a little stick person" is all of that your handwriting?
A. No.

Q. Whose handwriting is that?
A. That's a pediatric resident that I was supervising in the clinic.
Q. Who was that pediatric resident that was in there?
A. Angela Fangmeier.
Q. Can you spell that?
A. F-A-N-G-M-E-I-E-R.
Q. Thank you very much for that.
And so she was a resident?
A. Yes.
Q. And was she a resident with a focus in pediatrics?
A. Yes.
Q. And were you her supervisor?
A. For that morning I was.
Q. Do you know how many times your resident that was there -- say that last name again, please. I'm sorry.
A. Fangmeier.
Q. "Fang" like fangs?
A. Yes.
Q. Dr. Fangmeier -- was she a doctor yet? Is appropriate for me to call her Dr. Fangmeier?
A. Yes.

Q. All right. Did Dr. Fangmeier do the talking between patient BrieAnna and Fangmeier or were you doing the talking?
A. I don't recall.
Q. Do you recall if Dr. Fangmeier was asking any questions?
A. I don't recall. She certainly did the documentation.
Q. Okay. So is all of this her handwriting?
A. Not all of it.
Q. I've got -- the reason I ask that, that looks a little different on "RO sexual abuse;" right? Than this writing; right?
A. That's correct.
Q. Do you know if maybe that "RO sexual abuse" came from the nurse that met with Momma and daughter before you and your resident ever came in?
A. That would be the typical convention.
Q. Very good. What's the purpose of showing the little stick person? "Patient is a four year old" and there's a little head with a T.
A. We're always looking for abbreviations and shortcuts, so that's the symbol for female, and a male would be a circle with an arrow.

Q. Got it. And "who stayed with grandparents August 8 through the 15th of this year." Do you see that?
A. Yes.
Q. Now, Dr. Fangmeier quotes BrieAnna.
Do you see that?
A. Yes.
Q. Now, one of the allegations in this case is that there was -- that there was a tongue going inside of BrieAnna. Were you aware of that?
A. No.
Q. That's one of the purported sexual assaults by McGirt, that a tongue allegedly was used.
Is today the first day you've known that?
A. That's the first time I've heard that.
Q. Yeah, all right.
Now, "Grandpa put his finger inside my private parts" that's coming from a four-year-old girl that says, "private parts."
Do you see that?
A. Yes.
Q. Now, first you didn't know Mr. McGirt in September of 2000 -- in September of '96; did you?
A. That's true.

Q. You didn't know whether he had little bitty hands or bigger hands of a man, a working man, a guy that works with his hands. You didn't know what hand he possessed; true?
A. That's true.
Q. Well, what I'm wondering is sometime allegedly between August 8th and August 15th of this year, within a month, patient states, "Grandpa put his finger inside my private parts."
Do you see that?
A. I do.
Q. Now, did you all ever find out whether it really was a finger, was it a thumb, what was Momma saying?
A. Don't have any documentation to elaborate beyond that.
Q. Because an embryo, a female embryo, during embryosis is developing body parts; true?
A. True.
Q. And the vagina of an embryosis, as they're developing, it is actually a smoothed over vagina; right?
A. I believe that's right.
Q. And take us through the embryonic stages up to a little baby. I got three baby girls, not

babies anymore, and two boys, the five of them are.

Take us through the embryonic stages of how a vagina develops in Momma's body as the baby is coming to the world.

A. I'm not prepared to do that and be a hundred percent assured that I get it completely accurate.

Q. Okay. But at some point that baby, female baby, is born with a hymen; right?

A. Most of the time. In many instances, yes.

Q. Yes. And there's a point where the hymen -- the hymen is at the entrance; right?

A. Yes.

Q. It's like at the very front of the vaginal canal, the vaginal opening; right?

A. Yes.

Q. Yeah. And that hymen on a three year old or four year old -- well, before I ask that question.

Estrogen. What is estrogen to a female?

A. Well, it's a hormone that influences many organs including the genitals.

Q. Yes. And estrogen to a hymen allows for elasticity; true?

A. I think that's true.
Q. Yeah. And a four year old is not going to have estrogen; right?
A. Yeah, not that I know of.
Q. No. And so if a baby girl that is three or four years old has that hymen right there in the front with no estrogen in her body, can you and I agree that that hymen is going to be rigid, not elastic, not forgiving; true?
A. No. I mean, some girls don't have much of a hymen. Sometimes it's just a tag from the very beginning and so there's a lot of variation in it.
Q. Well, she had a hymen, BrieAnna, according to your note; right?
A. Yeah.
Q. Because what I'm wondering, I'm going back to this time frame, see, August 8th to August 15th, 1996, you're told or Dr. Fangmeier is told or your nurse is told, that there is a purported sexual assault where Mr. McGirt "stuck his finger inside my private parts," that's what the girl says; right?
A. Yes.
Q. And you don't know whether -- if Momma was in

the room, do you know how close Momma was?
A. I don't know.
Q. And do you know, I think I heard you testify on direct examination that, or maybe it was on cross, that there is a need to please with children and their parents when they're saying something.
Do you remember that?
A. That would be fairly common in certain ages.
Q. What ages? Four?
A. Preschoolers, yes.
Q. Yes, yes. Need to please; right?
A. Yes.
Q. Now, what we're getting to here is so let's say that hypothetically speaking, of course, on August 10th, this three year old about to turn four, Doctor, has a finger or a thumb pushed inside her. Wouldn't that necessarily be painful?
A. I would think that could be painful.
Q. On a scale of 1 to 10, 10 being death-defying pain, one being I don't even really feel it, where would you put that in your medical opinion?
A finger allegedly going inside the vagina of a three year old by a grown man, with hands, what

would that do?

What kind of pain are we talking about? Would she scream? Would she cry? Would she curl up?

What the heck would you expect to be going on if, in fact, that happened?

A. The way that you described it sounds like it would be painful.

Q. Well, I'm asking you. I'm just a lawyer. You're the expert doctor.

What do you think? Three year old about to be four with an adult finger going inside the vagina. No estrogen, non-elastic, no elasticity to the hymen more probable than not, that would have to be a painful experience; wouldn't you agree?

A. I think it would be uncomfortable.

Q. More than uncomfortable; true?

A. I think it would be uncomfortable, painful, but whatever you want to call it.

Q. I want to know the truth. Would you say it's painful?

A. I don't know --

MS. MCAMIS: I'm going to object.

THE WITNESS: -- I don't have a vagina.

THE COURT: Sustained.
Q. (BY MR. WHITE, JUNIOR:) Now, would there be blood. Would there be blood?
A. That would be a possibility.
Q. Do you know if anybody has ever seen any blood -- first, do you know if this BrieAnna wore panties?
THE COURT: Mr. White, would you please return to the microphone?
MR. WHITE, JUNIOR: I'm sorry.
THE COURT: Every time you get away it's difficult to hear, so please try to stay at the microphone.
MR. WHITE, JUNIOR: I will. Thank you, your Honor.
THE COURT: Thank you.
Q. (BY MR. WHITE, JUNIOR:) Do you know if she wore panties?
A. Nothing about that's documented here.
Q. Good question. Where's the blood?
MS. MCAMIS: I'm sorry. Is there a question, your Honor? Is he just making statements?
MR. WHITE, JUNIOR: I'm asking where is the blood if it -- where is the blood?

MS. MCAMIS: I raise the same objection, your Honor.

MR. WHITE, JUNIOR: I'll rephrase it.

THE COURT: Please do.

Q. (BY MR. WHITE, JUNIOR:) Did anyone ask, Have you seen any evidence of blood from this four-year-old girl?

Did anybody ask that when that accusation was made?

A. Well, it's not documented in this medical record.

Q. So you don't know?

A. Correct.

Q. "And Grandpa asked me to touch his private part with my hand." Do you see that?

A. Yes.

Q. Well, did she touch it or not, allegedly?

A. We were just capturing what was reported to us in terms of the history.

Q. Did anybody say to Momma or to BrieAnna, did she really actually touch a grown man's penis? Did anybody ask that question if you know?

A. No, not in our clinic.

Q. Now, did Mother tell you what she reported to DHS and law enforcement?

A. It's not documented.
Q. Did Mom tell you what, if anything, Victory Christian Center counseled Mom and daughter on, if anything?
A. Those details are not documented.
Q. Have you seen those counseling records?
A. No.
Q. Then PMH under -- by the way, is there anything else we need to add to the HPI portion of this document that you think might be missing?
A. This is a pretty good note from a good resident.
Q. All right. Anything we need to add to "PMH:"?
A. There's always something that you could put but there was probably not a need.
Q. What does "PMH" stand for?
A. Past medical history.
Q. FH. What's "FH"?
A. Family history.
Q. Nothing; right?
A. Correct.
Q. Do you recall if De Ette ever told you anything about family history?
A. No.

Q. And then SH. What's "SH"?
A. Social history.
Q. And what does that mean? The social history of the child?
A. Yeah. Where they live, who takes care of them, where they go to school.
Q. And quote, "close relationship" closed quote with Mom. Do you see that?
A. Yes.
Q. Did that come from the four year old or did that come from the mother, De Ette?
A. I don't know for certain.
Q. All normal?
A. Pardon me?
Q. All normal?
A. Yes.

MR. WHITE, JUNIOR: Thank you, Doctor.

THE COURT: Redirect.

MS. MCAMIS: May I proceed, your Honor?

THE COURT: You may.

REDIRECT EXAMINATION

BY MS. MCAMIS:

Q. Dr. Stewart, I want to go over some of the things that were asked of you.

First of all, you were asked about things

like embryosis of the vagina.

Do you remember that?

A. Yes.

Q. Is there a particular field and speciality that concerns the development of embryos in the womb, OBGYN?

A. Yes, and prenatal medicine would be involved with that, clinical genetics.

Q. Does how the vagina develops in an embryo in the womb have anything at all to do with your examination of a four year old who has been sexually abused?

A. No.

Q. Counsel asked about how girls are born with a hymen and whether they're rigid or whether they're elastic.

Do you remember those questions?

A. Yes, I do.

Q. Dr. Stewart, I asked you on direct examination do people have a lot of misconceptions about hymens.

MR. WHITE, JUNIOR: Objection; leading.

THE COURT: Overruled.

THE WITNESS: Yes.

Q. (BY MS. MCAMIS:) And is that one of the

things exactly what you were talking about?
A. Yes.
Q. I'm going to use some of the terminology that counsel used. He said if a finger or a thumb was jack-pushed inside of her would that be painful?
Do you remember him saying that?
A. Yes.
Q. In your 30 years of experience as a pediatrician seeing thousands of pediatric patients are you familiar with the sexual abuse of children?
A. Yes.
Q. Can you tell us, Dr. Stewart, whether or not it is common for sexual predators of children to jack-push their finger inside or do they groom their children?
A. Well, I understand that it's more common to groom them.
Q. Is it common for sexual predators to put just the tip or just touch or just rub?
A. I think that's fairly common.
Q. If, in fact, a little girl tells you that she has been sexually abused, do you demand to see blood in the panties and if you don't she hasn't been?

A. I do not tend to ask about viewing the panties.
Q. In your experience for 30 years in the field of pediatrics, have you seen patients who have, in fact, suffered years of sexual abuse?
A. I think I have. Though, you know, it's -- I don't always receive the feedback from every child that I've examined.
Q. Do they all scream and cry and curl up when they are being perpetrated upon?
A. Oh, I don't know.
Q. If they don't scream and cry and curl up in pain does that mean that it didn't happen to them?
A. I wouldn't think that would be a requirement.
Q. Counsel asked you about whether there was any statement by Brie that day that she had been penetrated with a tongue.
Do you remember that?
A. I remember being asked about that, yes.
Q. In your 30 years as a pediatrician is it true that children disclose in stages?
MR. WHITE, JUNIOR: Leading, your Honor.
THE COURT: Sustained.
THE WITNESS: Yes.

THE COURT: It's sustained.

Doctor, wait for your next question, please.

THE WITNESS: Oh, I'm sorry.

THE COURT: That's all right. Thank you.

THE WITNESS: I don't understand the terminology.

THE COURT: That's understandable.

Q. (BY MS. MCAMIS:) Dr. Stewart, let me ask you, when you speak with a pediatric patient do you expect her to tell you everything that happened exactly at that moment?

A. I do not.

Q. What does it mean for a child to disclose in stages?

A. Again, as they again develop some trust and more comfort with the situation over time incrementally, they will tend to disclose more.

Q. And so would it be common in your training and experience if a little girl starts off telling one part of it to her mom and then later tells another part and then later tells another part?

A. Yes, that would be consistent with my

experience.
Q. Counsel asked you about Dr. Fangmeier. Do you recall that?
A. Yes.
Q. And he asked you about her being a resident, whether he could call her a doctor.
To be clear, the facility that you were working at the time, the OU Health Sciences Center Pediatric Clinic, is a teaching facility to train pediatric residents; correct?
A. That's correct.
Q. Counsel asked you about how do you know how much time Dr. Fangmeier spoke or how long they were in there or what Dr. Fangmeier said to Brie.
Let me ask you this, Doctor: If -- he asked about leading questions and if you ever heard your pediatric resident, your nurse or otherwise ask a leading question, like isn't it true he put his fingers inside of you, you would stop that. You would document that. You would make sure that leading questions weren't being asked; is that correct?
A. That is correct. That would be a teaching moment for sure.
Q. Counsel asked you if it was the Momma, he

kept calling her, who came in to talk about her daughter being sexually abused.

First of all, if a mother becomes aware that her child has been sexually abused is there anything inappropriate whatsoever with the mother taking her child to the doctor to be checked out?

A. No.

Q. If a mother comes in and says my child has been complaining of a sore throat and then the child says my throat hurts is there anything inappropriate about that?

A. No.

Q. If you were in the room and counsel was asking you if you knew anything about the family dynamics or any of that information, if you were in the room and you saw a mother who was somehow inappropriately influencing her child, tell the doctor what he did, tell him what I told you to say, say this, say that, would you document that?

A. Yes, I would.

Q. In this record is there anything to suggest that there was anything inappropriate going on?

A. No.

Q. Counsel also asked you about forensic interviews and you talked a little bit about the

physicians who specialize in child abuse and neglect.

Do you recall that?

A. Yes.

Q. And, Doctor, do those physicians work through the Justice Center, the Children's Advocacy Center in Tulsa?

A. Yes.

Q. Do they also do -- not the doctors but there are forensic interviews that take place at the Children Advocacy Center; is that correct?

A. Yes, that's correct.

Q. Dr. Stewart, in your 30 years of pediatrics have you unfortunately found that sometimes children in a larger community have access to those services that children in a smaller community do not?

MR. WHITE, JUNIOR: Leading.

THE COURT: Sustained. Rephrase, counsel.

Q. (BY MS. MCAMIS:) Doctor, is there any difference that you have seen in your practice about children who come from a larger community versus children who come from a smaller community?

A. There are differences, yes.
Q. If, in fact, the child is not taken for a forensic interview, is that her fault? Is that her choice?
A. I don't know. There are a lot of factors that come into play in terms of the work of the DHS investigators, the local law enforcement. It's a bewildering and complicated system.
Q. Sure. It's not up to the four year old what happens.
A. No.
Q. And if those processes were not put in place in 1996, does that just mean we say never mind?
A. No.
Q. Finally, Doctor, counsel asked you several questions about gynecological examinations.
Would it ever be appropriate for a four year old prepubescent girl to be submitted to a gynecological examination?
A. The exam that we did would be generally sufficient.
Q. And counsel started off his examination by distinguishing between a doctor D.O., and an M.D. doctor.
First of all, I want to ask those

pediatricians who specialize in child abuse and neglect at the Justice Center they're all D.O.s; correct?
A. Yes.
Q. Are you in any way less qualified to take care of the thousands of children you have taken care of in 30 years?
A. No.
MS. MCAMIS: Thank you, sir. I have no further questions.
THE COURT: Mr. White, do you have recross?
MR. WHITE, JUNIOR: Brief.
THE COURT: Okay. Please proceed.

CROSS-EXAMINATION

BY MR. WHITE, JUNIOR:

Q. Did your facility have a forensic interviewer?
A. The pediatric clinic that I was in, no.
Q. Now does the OU Health Science Center in Tulsa have a forensic interviewer?
A. Yes.
Q. And is it in the same building as what you're in?
A. No.

Q. Where -- how close is it to you?
A. Back in 1996 it was maybe, you know, 20 yards away from the clinic.
Q. All right. Any reason why you did not recommend that BrieAnna participate in a forensic interview?
A. Well, yeah. Typically if DHS and law enforcement had already started an investigation, that ball was already rolling.
Q. Do you know if she ever was forensically interviewed?
A. I do not.
Q. Do you know if she was sexually abused?
A. I could not rule it out; I could not rule it in.
Q. You don't know?
A. Don't know.
Q. By the way that document we went over, you're not the one that prepared that document. It was Dr. Fangmeier?
A. Correct. I signed the bottom after I had reviewed the content back in 1996.
Q. And you agreed with it?
A. I did, yeah. So I had the ability to amend it if I disagreed with it. She was a very good

pediatric resident, very competent in documenting, so I agreed with it. That's the bare minimum that you would write.

Q. Thank you, Doctor.

A. You're welcome.

THE COURT: Ms. McAmis, can this witness be excused?

MS. MCAMIS: Yes, your Honor.

THE COURT: Mr. White, can this witness be excused?

MR. WHITE, JUNIOR: Certainly, your Honor.

THE COURT: All right. Very good.

Dr. Stewart, you may be excused.

Ladies and gentlemen, we're going to conclude for the day. I appreciate your time and attention. Please, report back tomorrow morning at 9:00. I would like you to report back to the court clerk's office in Room 208. You will be directed to your respective break rooms. Seven of you will be directed to one break room for distancing and the other seven will be directed to another break room. It's very important once you reach your break room, please do not leave that room. You should have bathrooms in there,

so you won't have a need to leave the break room. We'll call for you when ready.

It's very important that during this recess over the evening, as well as any other recess, that you do not discuss this case with anyone, that includes your fellow jurors, your family members, your friends, anybody involved in this trial or anyone else. If anyone tries to talk with you about this case, you must report it to me immediately.

Do not read, do not listen to any news reports, do not watch anything on TV or anything of the sort about this case. If you're listening to the radio and something comes on about the case, you must turn it off. That's your obligation. Do not make any personal independent investigation regarding this case whatsoever.

Finally, keep in mind that you must keep an open mind in this case until all of the evidence has been received, you have heard from all of the witnesses, you have heard all of the evidence, and you have received the instructions from this court as to the law.

Thank you very much for your time and attention. We'll be in recess.

(The jury having been dismissed at 5:21 p.m., the following transpired:)

THE COURT: Let's go on the record real quick.

Counsel, do we have anything to discuss this evening outside the presence of the jury?

MS. MCAMIS: Your Honor, I do have an issue that I apologize for bringing to your attention. I don't know whether you would prefer to deal with it this evening or in the morning, if I may briefly explain.

THE COURT: Sure. Go ahead.

MS. MCAMIS: I had been having email conversations with Mr. O'Carroll about the fact that in this case, the United States Supreme Court made a finding that the defendant was, in fact, Native American and was, in fact, was committed on -- this was committed on land reserved by the Muscogee Creek Nation.

I asked -- I sent a proposed stipulation to Mr. O'Carroll --

THE COURT: Let me stop you right there.

Surely there's going to be a stipulation that Mr. McGirt is a member of an Indian tribe, and that this occurred on an Indian reservation.

Tell me that's going to be the case.

MS. MCAMIS: He told me that -- no. Today for the first time, he told me it had to be a quid pro quo, and that I had to give him something before he would stipulate to that.

And what I was asking the Court is that the Court would surely take judicial notice. This is a situation where the United States Supreme Court made those findings.

THE COURT: All right. Let me hear from Mr. O'Carroll.

Please, approach the podium.

MR. O'CARROLL: Yes, your Honor.

THE COURT: "Yes" to what question?

MR. O'CARROLL: Say again, sir?

THE COURT: Let me hear from you with regard to the comments made by Ms. McAmis.

MR. O'CARROLL: I think that she accurately stated what I told her.

THE COURT: Okay. Is there a stipulation that Mr. McGirt is a member of an Indian tribe and that this alleged offense occurred in Indian territory?

MR. O'CARROLL: Are you telling me to stipulate, Judge?

THE COURT: No. I'm asking you if there is a stipulation.

MR. O'CARROLL: So far, no.

THE COURT: Okay. Did Mr. McGirt take the position in a previous appeal to the Supreme Court that he was, in fact, a member of an Indian tribe?

MR. O'CARROLL: I'm confident that he did, Judge.

THE COURT: Did he take the position than these alleged crimes occurred on Indian territory?

MR. O'CARROLL: I'm confident he did, Judge.

THE COURT: Very well. Anything else?

MR. O'CARROLL: No, your Honor.

THE COURT: Okay. Anything else, Mr. White?

MR. WHITE, JUNIOR: I would just ask for a line-up of witnesses for tomorrow.

THE COURT: Oh, I can't hear you. Take your mask down a little bit, sir.

MR. WHITE, JUNIOR: I would ask for a line-up of witnesses the government intends to call tomorrow.

THE COURT: Ms. McAmis, are you prepared to do that?

MS. MCAMIS: Your Honor, I -- just to be clear, do I need to formally ask for the Court to take judicial notice because if not, I will need to have a witness come in and testify as to those matters that were found by the Supreme Court.

THE COURT: The Court is prepared to take judicial notice that Mr. McGirt is a member of an Indian tribe and that these alleged acts occurred on Indian territory.

Also, the Court would find that Mr. McGirt would be estopped from taking any other position in light of his prior proceedings and prior positions.

MS. MCAMIS: And with that, your Honor, I've provided counsel with the exact order of the witness list and there's only, I believe, four more witnesses on there, so I don't know what else they're asking of me.

THE COURT: Okay. Very good.

MR. WHITE, JUNIOR: Thank you.

MS. MCAMIS: I have nothing further, your Honor.

THE COURT: Okay. Anything further,

counsel?

MR. WHITE, JUNIOR: No, your Honor.

THE COURT: Okay. We'll see you tomorrow morning at 9:00 a.m.

(Off the record at 5:25 p.m.)

(This concludes proceedings had on November 4, 2020. For further transcription, see Volume II of this transcription.)

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C E R T I F I C A T E

I, Shelley Ottwell, Registered Professional Reporter for the Eastern District of Oklahoma, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes and is a true record of the proceedings held in the above-captioned case.

I further certify that I am not employed by nor related to any party to this action, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of October, 2021.

s/Shelley Ottwell
SHELLEY OTTWELL, RPR, CSR
United States Court Reporter